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LYNN, MA 01901

**MAILED**

**JUL 11 2012**

**OFFICE OF PETITIONS**

In re Patent of Anton Kagan	:	
Patent No. 5,904,744	:	
Issue Date: May 18, 1999	:	Letter
Application No. 08/872,499	:	
Filing Date: June 10, 1997	:	
For: Fan Filter With Fastening Means	:	

**Request for Information**

This is a letter responding to a petition under 37 C.F.R. § 1.378(b) filed May 17, 2012, by the inventor of record.

The inventor should submit the information requested in this letter within TWO MONTHS of the mailing date of this letter. Extensions of time may not be obtained. The response to this Requirement for Information should include a cover letter entitled "Response to Request for Information." The failure to file a reply to the instant Request for Information will be interpreted as a desire by the inventor to no longer pursue reinstatement of the patent and the Office will give no further consideration to the matter.

**Background Information Pertaining to Patent No. 5,641,340 ("Patent A")**

Patent A issued June 24, 1997.

The 3.5 year maintenance fee and the 7.5 year maintenance fee were timely paid.

The 11.5 year maintenance fee could have been timely paid from June 24, 2008, to December 24, 2008, or with a surcharge from December 25, 2008, to June 24, 2009. The maintenance fee was not timely paid. As a result, Patent A expired on June 25, 2009.

The Office mailed a Notice of Patent Expiration on July 20, 2009.

A review of Office records indicates an annotated copy of the July 20, 2009 notice was received by the Office on January 20, 2012, along with \$3,065.

The annotated notice includes the following handwritten language:

2365  
+  
700  
3065

This I pay for maintenance fee for [Patent No.] 5,641,340.  
[Inventor's Signature]

Office records fail to indicate a petition under 37 C.F.R. § 1.378(b) has ever been filed for Patent A.

Background Information for Patent No. 5,904,744 ("Patent B")

Patent B issued May 18, 1999.

The 3.5 year maintenance fee and the 7.5 year maintenance fee were timely paid.

The 11.5 year maintenance fee could have been timely paid from May 18, 2010, to November 18, 2010, or with a surcharge from November 19, 2010, to May 18, 2011. The fee was not timely paid. As a result, Patent B expired May 19, 2011.

The inventor submitted a petition under 37 C.F.R. § 1.378(b) on May 17, 2012. The petition states the petition includes \$3,065, which is the sum of the 11.5 year maintenance fee (\$2,365) and the required surcharge (\$700). However, Office records fail to indicate the Office received a payment of \$3,065 with the petition.

The third page of the petition includes handwritten language. Although the language is not clearly legible, the language appears to state,

I am in North Shore Medical Center. Heart failure and living will with heart failure  
[illegible word] [Petitioner's Signature]

The petition does not include any statements or evidence to show the delay in payment of the maintenance fee was unavoidable.

Background Information Pertaining to Both Patents

The Office received a letter on April 29, 2009, stating in part,

The company which promised to produce my INVENTIONS ACCORDING TO PATENTS #5,641,340 & 5,904,744 refused to make it due to the current crisis. Therefore, I am not able to pay the maintenance fee FOR THE PATENTS #5,641,340 & 5,904,744 within the grace period. I ask you, for a special event during the crisis, to get

me an extension for 24 months for the maintenance fee for [these] PATENTS. This will allow me time to find another company to produce my invention.

### Discussion

As a preliminary matter, the Office notes a separate Request for Information is being mailed for Patent No. 5,641,340 at the same time the instant request is being mailed.

#### Steps that Must be Taken if the Inventor Only Wishes to Reinstate Patent A

If the inventor only wishes to reinstate Patent A, the inventor should not file any additional papers for Patent B.

If the inventor wishes to reinstate Patent A, a formal petition under 37 C.F.R. § 1.378(b) should be filed in Patent A. The petition must include the required showing of unavoidable delay. The inventor should ensure the petition mentions the fact the \$3,065 was previously paid for Patent A. A form which may be used when filing a petition under 37 C.F.R. § 1.378(b) is attached.

The petition must include a showing that the delay in payment of the 11.5 year maintenance fee was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The required showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which the inventor became aware of the expiration of the patent, and the steps taken to file the petition promptly.

#### Steps that Must be Taken if the Inventor Only Wishes to Reinstate Patent B

If the inventor only wishes to reinstate Patent B, the inventor should file a response to the request for information mailed for Patent B, the required fee, **and** a sufficient showing of unavoidable delay.

The inventor has two options when submitting the \$3,065 fee.

- Option 1: The inventor may submit \$3,065 for Patent B, and submit a separate request for the \$3,065 paid for Patent A to be refunded; or
- Option 2: The inventor may file a request in Patent B for the \$3,065 paid for Patent A to be transferred to Patent B, and file a separate request in Patent A requesting the Office transfer the \$3,065 filed for Patent A to Patent B.

If the inventor only wishes to reinstate Patent B, the only paper the inventor needs to file in Patent A will be a request for the Office to refund (or transfer) the \$3,065 previously paid for Patent A.

The inventor has the option of pursuing reinstatement of Patent B, but not Patent A, under 37 C.F.R. § 1.378(c). A copy of a blank petition form that may be used to file such a petition is attached. The surcharge for an unintentional petition under 37 C.F.R. § 1.378(c) is \$1,640, instead \$700. Therefore, if a petition under 37 CFR 1.378(c) is filed, it must be accompanied by a payment of an additional \$940. In general, a petition under 37 C.F.R. § 1.378(c) needs to simply state the expiration of the patent was “unintentional,” whereas a petition under 37 C.F.R. § 1.378(b) must prove that the entire delay in payment was “unavoidable.”

Steps that Must be Taken if the Inventor Wishes to Reinstate Both Patents

If the inventor wishes to reinstate both patents, the inventor must file a response to the Request for Information mailed for Patent A. The response must include:

1. A formal petition under 37 C.F.R. § 1.378(b), and
2. The required showing of unavoidable delay.

If the inventor wishes to reinstate both patents, the inventor must file a response to the Request for Information mailed for Patent B. The response must include:

1. A. An indication the inventor wishes to pursue relief under 37 C.F.R. § 1.378(b),  
B. The required total fee of \$3,065, and  
C. The required showing of unavoidable delay; or
2. A. A formal petition under 37 C.F.R. § 1.378(c), and  
B. A total fee payment of \$4,005.

Steps that May be Taken if the Inventor does not Wish to Pursue Reinstatement of Either Patent

If the inventor no longer wishes to pursue reinstatement of either patent, the inventor may simply file a request for the Office to refund the \$3,065 paid for Patent A. The refund request should be sent to Mail Stop 16, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450. A copy of this letter should accompany any request for refund.

Further correspondence with respect to this matter may be submitted as follows:

By Internet: A request for reconsideration may be filed electronically using EFS Web.<sup>1</sup>  
Document Code “PET.OP” should be used if the request is filed electronically.

By mail: Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300  
Attn: Office of Petitions

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<sup>1</sup> General Information concerning EFS Web can be found at <http://www.uspto.gov/patents/process/file/efs/index.jsp>.

By hand: U.S. Patent and Trademark Office  
Customer Service Window  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Telephone inquiries regarding this communication should be directed to Petitions Attorney  
Steven Brantley at (571) 272-3203.



Charles Steven Brantley  
Senior Petitions Attorney  
Office of Petitions

Attached: Form for Petition Under 37 C.F.R. § 1.378(b)  
Form for Petition Under 37 C.F.R. § 1.378(b)  
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